

1 Kathleen McDermott (*pro hac vice*)
2 Attorney in Charge
3 Howard Young (*pro hac vice*)
4 Lucas Elliot (*pro hac vice*)
5 Clayton Morton (*pro hac vice*)
6 John Cosgriff (*pro hac vice*)
7 MORGAN LEWIS & BOCKIUS LLP
8 1111 Pennsylvania Avenue, NW
9 Washington, DC 20004
10 T 202.739.3000 | F 202.739.3001
11 Email: kmcdermott@morganlewis.com

12 Charles H. McCrea (SBN #104)
13 HEJMANOWSKI & MCCREA LLC
14 520 S. 4th St., Ste. 320
15 Las Vegas, NV 89101
16 T 702.834.8777 | F 702.834.5262
17 Email: chm@hmlawlv.com

18 Attorneys for CREEKSIDE HOSPICE II, LLC,
19 SKILLED HEALTHCARE GROUP INC. and
20 SKILLED HEALTHCARE, LLC

21
22
23
24
25
26
27
28
UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

15 UNITED STATES OF AMERICA, et al.,

Case No.: 2:13-cv-00167-APG-PAL

16 Plaintiffs,

17 v.

18 CREEKSIDE HOSPICE II, LLC, et al.,

JOINT STATUS REPORT

19 Defendants,

20
21 AND ALL RELATED ACTIONS.

22
23 Plaintiffs United States of America, Joanne Cretney-Tsosie, and Veneta Lepera and
24 Defendants Creekside Hospice II, LLC, Skilled Healthcare Group, Inc., and Skilled Healthcare,
25 LLC (all hereinafter referred to as "Creekside"), submit the foregoing Joint Status Report

1 pursuant to the Court's September 2, 2016 Order (Dkt. #162) and the Court's November 7, 2016
 2 Order granting the parties' Joint Motion to Stay Action Until February 28, 2017. (Dkt. #183).¹
 3

4 **I. Background and Status of Discovery**

5 This action is brought by the United States and Relators Joanne Cretney-Tsosie and
 6 Veneta Lepera under the False Claims Act against a hospice provider, Creekside Hospice, and its
 7 corporate parent, Skilled Healthcare. The gravamen of the action is that Creekside violated the
 8 False Claims Act by knowingly submitting or causing the submission of false claims to Medicare
 9 for reimbursement for hospice services for patients who were ineligible for coverage in the time
 10 period 2010 to 2013. These allegations are disputed and Creekside filed a motion to dismiss the
 11 action in August 2015. (Dkt. #98).² Discovery commenced in June 2015 and is not completed by
 12 the parties. There is no Scheduling Order in this action. The parties' unresolved discovery
 13 disputes are set forth in Status Reports that were filed in September 2015. (Dkt. #111-13). A
 14 temporary stay against depositions of current and former employees was granted by the Court in
 15 September 2015, and no expert discovery has occurred. (Dkt. #114).

16 Throughout 2016, the United States and Creekside engaged in significant and productive
 17 discussions pertaining to settlement of the action. The parties filed a Joint Unopposed Motion to
 18 Stay Action for Ninety Days Pending Settlement Discussions on June 2, 2016 (Dkt. #159). The
 19 Court granted that Motion on June 15, 2016. (Dkt. #160). On September 1, 2016, the parties filed
 20 a joint Motion to Continue Stay until November 15, 2016 (Dkt. #161), which the court granted on
 21 September 2, 2016 (Dkt. #162). On November 7, 2016, the Court extended the stay until January
 22 6, 2017. (Dkt. #173). On January 6, 2017, the Court extended the stay until February 28, 2017.
 23
 24
 25
 26

27 ¹ Counsel for Relator Lepera has not replied when asked to approve the final version of this Status Report.
 28 ² In light of the parties' agreement in principle to settle the dispute, the Court dismissed without prejudice
 Creekside's Motion to Dismiss as moot. (Dkt. #162).

1 (Dkt. 183). The parties seek an additional stay to April 28, 2017 to finalize the settlement
 2 documents related to this action.

3 **II. Settlement Agreement and Other Outstanding Issues**

4 The United States and Creekside have reached an agreement in principle pertaining to
 5 settlement of the action. The parties need additional time to obtain the necessary approvals for
 6 the proposed settlement, including the approval of the Acting Assistant Attorney General for the
 7 Civil Division and the United States Attorney for the District of Nevada.

8 In addition, Relator Cretney-Tsosie and Defendants are currently negotiating Relator's
 9 statutory attorneys' fees and costs pursuant to 31 U.S.C. § 3730(d). If these negotiations are not
 10 successfully concluded by the time the action is dismissed, Relator Cretney-Tsosie will file a
 11 motion for attorneys' fees consistent with Local Rule 54-14.

12 Finally, in the event Relator Cretney-Tsosie and the Government are unable to reach an
 13 agreement as to the percentage for her relator's award pursuant to 31 U.S.C. § 3730(d), Relator
 14 Cretney-Tsosie will file a motion with the Court to resolve the share issue.

15 **III. Motion to Continue the Court's November 7, 2016 Order Staying this Action**

16 The parties respectfully request that the Court continue its stay until April 28, 2017 in
 17 order to give the parties time to obtain the necessary approvals for the proposed settlement and to
 18 execute the agreement and submit dismissal papers to the Court. The parties request that the stay
 19 exclude adjudication of Plaintiff/Relator Cretney-Tsosie's Motion to Dismiss the Complaint of
 20 Plaintiff/Relator Lepera ("Motion to Dismiss") (Dkt. 166), which is now fully briefed and raises
 21 an issue that will not be resolved by the Settlement Agreement. A stay will assure that the Court
 22 does not engage in case activity unnecessarily and will reduce the burden and expense of the
 23 litigation process for the parties. A Motion to Continue Stay Until April 28, 2017 and proposed
 24 order accompanies this Joint Status Report.

1 Dated: February 23, 2017

Respectfully submitted,

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

*Counsel for Defendants Creekside Hospice II,
LLC, Creekside Home Care II, LLC, Skilled
Healthcare Group, Inc. and Skilled Healthcare,
LLC.*

/s/ Kathleen McDermott

Kathleen McDermott (*pro hac vice*)
Attorney in Charge
Howard Young (*pro hac vice*)
Lucas Elliot (*pro hac vice*)
Clayton Morton (*pro hac vice*)
John Cosgriff (*pro hac vice*)
MORGAN LEWIS & BOCKIUS LLP
1111 Pennsylvania Avenue, NW
Washington, DC 20004
T 202.739.3000 | F 202.739.3001
Email: kmcdermott@morganlewis.com

Charles H. McCrea (SBN #104)
HEJMANOWSKI & MCCREA LLC
520 S. 4th St., Ste. 320
Las Vegas, NV 89101
T 702.834.8777 | F 702.834.5262
Email: chm@hmlawlv.com

Counsel for Plaintiff

CHAD A. READLER
Acting Assistant Attorney General
DANIEL G. BOGDEN
United States Attorney

/s/ Roger Wenthe

ROGER WENTHE
Assistant United States Attorney

MICHAEL D. GRANSTON
ANDY MAO
MICHAEL PODBERESKY
Attorneys, Civil Division

Counsel for the Relator

L. Timothy Terry (NV Bar #2341)
tim@theterrylawfirm.com
The Terry Law Firm, Ltd.
102 N. Curry Street
Carson City, NV 89703
775.291.9071

1 Steven Cohen (*pro hac vice*)
2 scohen@cohenlawgroup.com
3 Cohen Law Group
4 70 West Madison Street, Suite 4000
Chicago IL 60602
312.327.8800

5
6 Matthew J. Piers (*pro hac vice*)
mpiers@hsplegal.com
7 Joshua Karsh (*pro hac vice*)
jkarsh@hsplegal.com
8 Juliet Berger-White (*pro hac vice*)
jberger-white@hsplegal.com
9 Caryn Lederer
clederer@hsplegal.com
10 Hughes Socol Piers Resnick & Dym, Ltd.
11 Three First National Plaza
12 70 West Madison Street, Suite 4000
Chicago, Illinois 60602
312.580.0100
13 By: /s/ Juliet Berger-White _____
14 Attorneys for Plaintiff/Relator Joanne
Cretney-Tsosie

15
16 Ruth L. Cohen, Esq. (NV Bar No: 1782)
Email: rlc@paulpaddalaw.com
17 Paul S. Padda, Esq. (NV Bar No. 10417)
Email: psp@paulpaddalaw.com
18 PAUL PADDA LAW, PLLC
4240 West Flamingo Road, Suite 220
19 Las Vegas, Nevada 89103
Tel: 702.366.1888
20 Fax: 702.366.1940
21 By: /s/ Paul S. Padda _____
22 Attorneys for Relator Veneta Lepera

1 Kathleen McDermott (*pro hac vice*)
2 Attorney in Charge
3 Howard Young (*pro hac vice*)
4 Lucas Elliot (*pro hac vice*)
5 Clayton Morton (*pro hac vice*)
6 John Cosgriff (*pro hac vice*)
MORGAN LEWIS & BOCKIUS LLP
1111 Pennsylvania Avenue, NW
Washington, DC 20004
T 202.739.3000 | F 202.739.3001
Email: kmcdermott@morganlewis.com

7 Charles H. McCrea (SBN #104)
8 HEJMANOWSKI & MCCREA LLC
520 S. 4th St., Ste. 320
Las Vegas, NV 89101
T 702.834.8777 | F 702.834.5262
Email: chm@hmlawlv.com

9
10
11 Attorneys for CREEKSIDE HOSPICE II, LLC,
SKILLED HEALTHCARE GROUP INC. and
SKILLED HEALTHCARE, LLC
12

13 UNITED STATES DISTRICT COURT
14 DISTRICT OF NEVADA

15 UNITED STATES OF AMERICA, et al.,

Case No.: 2:13-cv-00167-APG-PAL

16 Plaintiffs,

17 v.

**JOINT MOTION TO CONTINUE STAY
UNTIL APRIL 28, 2017**

18 CREEKSIDE HOSPICE II, LLC, et al.,

19 Defendants,

20
21 AND ALL RELATED ACTIONS.
22

23 Plaintiffs United States of America, Joanne Cretney-Tsosie and Defendants Creekside
24 Hospice II, LLC, Skilled Healthcare Group, Inc., and Skilled Healthcare, LLC (all hereinafter
25 referred to as “Creekside”), jointly move to continue the stay in this action until April 28, 2017,
26 except for the Court’s adjudication of Plaintiff/Relator Cretney-Tsosie’s Motion to Dismiss the
27 Complaint of Plaintiff/Relator Lepera (“Motion to Dismiss”), (Dkt. 166), which is fully briefed,
28

based upon an agreement in principle between the United States and Creekside to settle this action, subject to approval of Department of Justice officials. A stay will allow the parties to execute the agreement and file the necessary paperwork with the Court to dismiss the action. This stay will prevent additional burden on the Court and unnecessary burden and expense to the parties. All parties to the action consent to the request for a stay.

WHEREFORE, Plaintiffs United States of America, et al., and Defendants' Creekside Hospice, et al., move this Honorable Court to:

- A. Grant their Joint Motion to Continue Stay; and
 - B. Enter an order staying this case in its entirety until April 28, 2017.

Dated: February 23, 2017

Respectfully submitted,

Counsel for Defendants Creekside Hospice II, LLC, Creekside Home Care II, LLC, Skilled Healthcare Group, Inc. and Skilled Healthcare, LLC.

IT IS SO ORDERED.

UNITED STATES DISTRICT JUDGE
Dated: February 23, 2017.

/s/ Kathleen McDermott
Kathleen McDermott (*pro hac vice*)
Attorney in Charge
Howard Young (*pro hac vice*)
Lucas Elliot (*pro hac vice*)
Clayton Morton (*pro hac vice*)
John Cosgriff (*pro hac vice*)
MORGAN LEWIS & BOCKIUS LLP
1111 Pennsylvania Avenue, NW
Washington, DC 20004
T 202.739.3000 | F 202.739.3001
Email: kmcdermott@morganlewis.com

Charles H. McCrea (SBN #104)
HEJMANOWSKI & MCCREA LLC
520 S. 4th St., Ste. 320
Las Vegas, NV 89101
T 702.834.8777 | F 702.834.5262
Email: chm@hmlawlv.com

Counsel for Plaintiff

CHAD A. READER
Acting Assistant Attorney General

DANIEL G. BOGDEN
United States Attorney

/s/ Roger Wenthe
ROGER WENTHE
Assistant United States Attorney

MICHAEL D. GRANSTON
ANDY MAO
MICHAEL PODBERESKY
Attorneys, Civil Division

Counsel for the Relator

L. Timothy Terry (NV Bar #2341)
tim@theterrylawfirm.com
The Terry Law Firm, Ltd.
102 N. Curry Street
Carson City, NV 89703
775.291.9071

Steven Cohen (*pro hac vice*)
scohen@cohenlawgroup.com
Cohen Law Group
70 West Madison Street, Suite 4000
Chicago IL 60602
312.327.8800

Matthew J. Piers (*pro hac vice*)
mpiers@hsplegal.com
Joshua Karsh (*pro hac vice*)
jkarsh@hsplegal.com
Juliet Berger-White (*pro hac vice*)
jberger-white@hsplegal.com
Caryn Lederer
clederer@hsplegal.com
Hughes Socol Piers Resnick & Dym, Ltd.
Three First National Plaza
70 West Madison Street, Suite 4000
Chicago, Illinois 60602
312.580.0100
By: /s/ Juliet Berger-White
Attorneys for Plaintiff/Relator Joanne
Cretney-Tsosie

Ruth L. Cohen, Esq. (NV Bar No: 1782)

1 Email: rlc@paulpaddalaw.com
2 Paul S. Padda, Esq. (NV Bar No. 10417)
3 Email: psp@paulpaddalaw.com
4 PAUL PADDA LAW, PLLC
5 4240 West Flamingo Road, Suite 220
6 Las Vegas, Nevada 89103
7 Tel: 702.366.1888
8 Fax: 702.366.1940
9 By: /s/ Paul S. Padda
10 Attorneys for Relator Veneta Lepera

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28